IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF JANUARY
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 17247 of 2001

Between:

Inox India Ltd., Rep.by Mr.K.A.Pandya
R/o.Registered Office at ABS Towers,4th floor Old Padra Road
Vadodara Gujarat.

..... PETITIONER

AND

State pf A.P Rep.by its Chairman and The Principal Secretary
Department of Animal Husbandry H-block
Secretariat Hyderabad and another

.....RESPONDENTS

ORDER:

The petitioner, which is a private limited company and having rate contract for supply of Veterinary Artificial Insemination equipment, filed this writ petition, challenging the proceedings of the Chief Executive Officer, Andhra Pradesh Livestock Development Agency, a State Government undertaking, dated 13.03.2001, passed in proceedings No.437/APLDA/B/2000, with a further direction to the 2nd respondent to release an amount of Rs.73,47,882/-, which is due to the petitioner, arising out of the contract.

Heard the learned counsel on either side.

The petitioner is a limited company, engaged in the business, manufacture, sale and supply of liquid Nitrogen containers under the brand name of 'Cryoseal'. The 2nd respondent has issued a tender notice for supply of veterinary artificial insemination equipment and entered into a rate contract with the petitioner by agreement dated 24.10.2000. It is relevant to extract clause Nos.4.7 and 10.2 of the agreement entered into between the parties. Clause Nos.4.7 and 10.02 read as follows:

> Clause No.4.7: The rates offered in the tender shall not exceed the MRP as well as the lowest price at which the firm sells the product of identical description to any other department or organization or person anywhere in the country. If such incidents of quoting higher rates come to the notice at any time during the course of rate contract period, the Chief Executive Officer, A.P.Livestock Development Agency reserves the right to initiate an appropriate disciplinary action against such firms including black-listing them.
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> Clause No.10.2: The Chief Executive Officer, APLDA is empowered to resort to any punitive action ranging from recovering of losses to black-listing of the erring rate contract firm/stockiest of any kind of malpractices, violating of the tender terms and conditions.

As per the terms, it was agreed by the petitioner that the rates offered in the tender, shall not exceed the maximum retail price as well as the lowest price at which the firm sales the product of identical description to any other department or organization. As per the said terms referred to above, if such incidence comes to the

light of the respondents, they are empowered to take action to recover losses and also to blacklist the petitioner. After supplying the containers No.920 with capacity of 35 litres and No.640 with capacity of 3 litres, the petitioner has raised the bill for Rs.2,61,73,222.40 ps. By that time, already an amount of Rs.1,88,25,213/- was paid by the account payee demand drafts. When such total bill was raised, referring to earlier payment, which was made totaling to Rs.1,88,25,213/-, the respondents, stating that they have noticed certain sales which were made of the identical items to third parties at lesser rate than offered to the respondents, passed the impugned order, settling the payments due for 35 litre containers by deducting an amount of Rs.58,69,600/- and stopping the balance payment payable for the 3 litre containers and further ordered blacklisting the petitioner.

Mainly this writ petition is filed on the ground that no notice and opportunity was given before passing the impugned order, in that view of the matter the impugned order is illegal and the respondents be directed to for payment of the remaining balance amount which is due as per the agreed terms of the contract.

Counter affidavit is filed on behalf of the respondents. In paragraph-5 of the counter affidavit, with reference to the allegations of the petitioner that no notice was issued, it is stated that no notice need be issued to the petitioner as the terms of the contract does not contemplate either notice or opportunity of being heard before passing the impugned order. In view of the proposed order to be passed by this Court, no reference need be referred further with regard to various allegations of the petitioner and the counter averments made in the counter affidavit filed by the respondents.

The learned counsel for the petitioner has placed reliance on a judgment of the Supreme Court in respect of the contention that no order can be passed for blacklisting without due notice and opportunity. It is contended by the learned counsel for the petitioner that as per the rate contract entered into, before recording a finding that the petitioner had sold similar such items at lesser price than agreed with the respondents, the respondents ought to have given a notice or an opportunity to the petitioner before recording such finding. The unilateral action of the respondent is arbitrary and illegal and in violation of principles of natural justice.

On the other hand, it is submitted by the learned counsel for the 2nd respondent that inasmuch as there are agreed terms and the action was taken in view of the said clauses in the agreement, in that view of the matter, no further

opportunity need be issued.

With reference to the above said submissions of the learned counsel on either side, it has to be seen, now it is fairly settled, even with regard to the contractual obligations, any steps taken by the respondents are subject to the scrutiny of the rights guaranteed under Article 14 of the Constitution of India. Though there are agreed clauses, which empower the respondents to recover losses and also to take steps, if it comes to the notice of the respondents that the petitioner had sold any items of similar nature at the rates lesser than the rate offered to the respondents, but even to record such findings, unless the petitioner is notified on the allegations, unilaterally respondents cannot record such findings and withhold the amounts which are due to the petitioner as per the rate contract agreement entered into. Whether at what point of time the petitioner had sold such similar items to third parties, whether such transactions can be taken basis to invoke clause Nos.4.7 and 10.2k of the rate agreement entered into, is a matter to be adjudicated by giving an opportunity to the petitioner. Merely because such contractual clauses are there in the agreement entered into, the respondent cannot pass the impugned order unilaterally by assuming that the petitioner had sold such similar items, which are agreed by the rate contract, at lesser rates than offered to the respondents.

Even with regard to the case of blacklisting simplicitor also, now it is held by the Apex Court that unless an opportunity is given, no order of blacklisting can be passed. Inasmuch as the impugned order is a comprehensive order, to deduct some amounts, which are otherwise payable to the petitioner without notifying the petitioner and without giving any opportunity to the petitioner and also by further blacklisting the petitioner for the future contract, it is a matter which evidently fit case where the petitioner has to be given opportunity before taking steps by the respondents. The respondent-Governmental organization is expected to act fairly and take any decision by invoking the terms and conditions in the agreement, only after issuing notice to the petitioner, but not otherwise. In that view of the matter, on this short ground, the impugned order is liable to be set aside. However, it is made clear that it is open for the respondents to adjudicate the matter after issuing notice as to whether the petitioner had sold any similar such items to third parties for lesser rates than agreed to the respondents in rate contract and it is also equally open to pass appropriate orders either for recovery of losses or to further blacklist the petitioner.

For the reasons stated above, the impugned order dated 13.03.2001 passed by the 2nd respondent, is hereby quashed and the

2nd respondent is directed to issue notice to the petitioner within four weeks from the date of receipt of a copy of this order, calling for explanation from the petitioner for the allegations levelled against him, and pass appropriate final orders, within two months from the date of receipt of such explanation from the petitioner, in accordance with law. Respondents are further directed not to take any steps for payment of any amounts till appropriate final orders are passed.

Subject to above observations, the Writ Petition is allowed in part. No order as to costs.

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R.SUBHASH REDDY,J

Dated: 30.01.2006

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